

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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ALICE PETERSON & NELLY CHANEY,	)	
	)	DOCKET NO.: PT-1997-102
Appellants,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FINDINGS OF FACT,
OF THE STATE OF MONTANA	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on the 23rd day of April, 1998, in the City of Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law. The taxpayers, represented by Alice Peterson-Liebel and Kermit Liebel, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by appraiser Don Blatt, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, a post-hearing submission schedule determined, a post-hearing submission was received, and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

### **FINDINGS OF FACT**

1. Due, proper, and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The property involved in this appeal is described as follows:

Land and improvements, Lot 1 and S 13.3' of Lot 2, amended Lots 3A and 4A per Certificate of Survey 464389, Lots 5 and 6, and Lots 15 through 20 of Block 63, Helena Townsite, Lewis and Clark County, State of Montana.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$48,380 for the land and \$55,330 for the improvements, for a total appraised value of \$103,710.

4. The taxpayers appealed this value to the Lewis and Clark County Tax Appeal Board requesting a total value of \$76,388 for land and improvements.

5. In a February 13, 1998 decision, the county board disapproved the taxpayer's appeal.

6. That decision was appealed to this Board on March 6, 1998 by taxpayer Alice J. Peterson-Liebel who stated:  
[Additional information from the City of Helena is being submitted to substantiate my position that my property has no

potential for future building sites due to several factors and has been over-evaluated for property tax purposes.

#### **TAXPAYERS' CONTENTIONS**

Mrs. Peterson-Liebel testified that Lots 1, 2, 19, and 20 of Block 63 are considered part of the watershed for Reeder's Alley and are not building lots. In a staff report from the Helena City Planning Department to the Helena Zoning Commission, (TP Ex 1, attch. 1, pg 10) the City of Helena Code 6-6-13 is cited which identifies restrictions to open flow channels and natural drainageways and states, in part, "It shall be unlawful to encroach upon natural or man-made drainageways with: (1) Temporary or permanent structures...."

Mrs. Peterson-Liebel stated Lots 2, 3, and 4 have no street access as a 20' cliff of bedrock borders the front of these lots.(TP Ex 1, attch. 3) Much of Lot 5 is a driveway that provides the only access to Lot 4 and to houses on Lots 4 and 6. She testified that Lots 4, 5, and 6 and the two houses would have to be sold together as each of the houses depends upon Lot 5 for access.

Mrs. Peterson-Liebel stated that the back of Lots 15, 16, 17, and 18 border a non-existent street, shown as an extension of Harrison Street; and the access is poor. There is

an east-west power line that runs across Lots 2 and 18; Montana Power has a 15' easement on each side of the poles. In addition, the lots are not building lots due to their size (42' x 100'); 50' is the minimum for Zone R-3.

Mrs. Peterson-Liebel testified that city water has always been a problem. The pressure is so low that there is no adequate fire protection. City Engineer Charles Hanson, in a letter of January 10, 1998, stated:

The City of Helena requires adequate services be available to property before a building permit will be issued. In order to serve your property in the vicinity of South Howie and Chatham you would need to provide main extensions for both water and sewer, access by an acceptable road and provisions for the perpetuation of the existing stormwater drainage.

....A watermain extension for your property would be marginal at best. The closest watermain to your property is in South Howie. However, the existing pressure and supply is substandard by today's requirements....The existing system....shows inconsistent and poor static pressure, unacceptable residual pressure and less than half of the needed fire flows. I could not approve a watermain extension that does not meet the minimum standards as required by law. The City does not have any immediate plans to remedy the current deficiencies in this portion of our water system.

In conclusion, your property, by itself is virtually undevelopable due to monetary and physical constraints....(TP Ex 1, attch. 2)

Mrs. Peterson-Liebel testified that the house on Lot

6 was built in 1879. It sustained structural damage in the 1935 earthquake. It was originally a duplex and was remodeled in 1936 into four small apartments; and there have been no changes to or remodeling done to the structure since 1936. She added: the plumbing is old and in poor condition and needs replacing; the foundation is rock and mortar and is cracked in several places; the porch foundation is in poor condition; there is a two inch slope to the floors from the outside walls to the middle of the house; the attic is unfinished, has no flooring, and is not insulated; the basement has a dirt floor.

Mrs. Peterson-Liebel testified that the building located on Lot 4 was built in 1868 and has not been occupied since 1955. The original rock and mortar foundation has been reinforced with concrete retaining walls to hold the building together and to keep water out that seeped in during the spring and in rain storms. She added: the floor is constructed of log joists and is uneven; the house needs to be rewired and the plumbing needs replacing; and the siding is original and south and west sides need replacing. There is no sewer line, as it was on a cess-pool system. There is no water to the property; the water line is plugged due to negligence on the part of either the City or Montana Power Company. The building is now

used for storage.

Mr. Liebel presented a Property Valuation and Tax Summary (TP Ex 3) to illustrate to the Board that, during the last three reappraisal cycles, the value of the subject property experienced disproportionately higher increases in value in comparison to those of adjacent properties.

#### DORIS CONTENTIONS

Mr. Blatt testified that he made AB-26 adjustments on the subject property. He stated the average buildable lot in the neighborhood of the subject property is 12,200 sf and valued at \$2.40/sf, as determined by the Computer Assisted Land Pricing (CALP) program for the neighborhood. He recognized Lots 4, 5, and 6 as one buildable lot of 12,200 sf; that lot was valued at \$2.40/sf, for a total of \$29,280. The remaining land, Lots 1, 2, 3, and 15 through 20, 38,200 sf, he valued at \$.50/sf, a total of \$19,100. He stated this reduced value recognized this portion of the subject property as non-buildable, due either to topography or lack of access to utilities. The total land value: \$48,380.

Mr. Blatt testified that the value of the structures on Lots 6 and 4 were determined by the cost approach to value. The effective age of the building on Lot 6 was changed from

1960 to 1940; the condition/desirability/utility factor (CDU) was reduced from "fair" to "very poor", and the attic area was removed from the pricing data. The "replacement cost new" (RCN) calculation was \$134,030 to which a 69% depreciation factor was applied that reduced the value further; an economic condition factor (ECF) of 119% was also applied that, in turn, increased the value, resulting in a final value of \$48,460.

The effective age of the building on Lot 4 was changed from 1960 to 1868; the CDU was reduced from "fair" to "very poor", and the total building area was increased from 900 to 960. The RCN calculation was \$23,540 to which a 75% depreciation factor was applied that reduced the value; an ECF of 119% was then applied that, in turn, increased the value, resulting in a final value of \$6,870. The total improvement value: \$55,330.

Mr. Blatt testified that the department adopted the ECF in the last cycle and stated it is a factor used to adjust cost values to reflect market prices.

Mr. Blatt pointed out an error in the taxpayers' exhibit 3 wherein the land and improvements values of the subject property were incorrectly separated; and he requested and was granted an opportunity to submit a post-hearing submission to correct what he considered to be a miscalculation

by the taxpayer.

### **DISCUSSION**

Accessibility, topography, lack of utilities, and power lines and easements are major factors that negatively impact the land value of the subject property. As a result of the AB-26 review process, the DOR recognized these factors by combining, for valuation purposes, the three lots (4, 5, and 6) where the structures and access road are located and allocating a reduced square foot value to the remaining lots (1,2,3, and 15 through 20).

Age and deteriorated condition are the major factors that negatively impact the improvement value of the subject property. The DOR recognized these factors by reducing the effective ages and modifying the CDUs of the two structures, thereby increasing the depreciation.

On the other hand, the DOR applied an ECF of 119%, thereby changing the overall depreciation from 69% to 50% for a structure built in 1879 and 75% to 56% for a structure built in 1868. There is no indication from the materials upon which the DOR based its valuation nor from the evidence in the record that this market adjustment factor is justified.

### **CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301 MCA.

2. The appeal of the taxpayers is hereby granted in part and denied in part and the decision of the Lewis and Clark County Tax Appeal Board is modified.

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**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the decision of the Lewis and Clark County Tax Appeal Board is modified and, for the 1997 tax year, the subject property shall be valued at \$48,380 for the land and the value of the improvements of \$55,300 is to be modified by the removal of the application of an Economic

Condition Factor to all of the improvements.

Dated this 21st day of May, 1998.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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PATRICK E. MCKELVEY, Chairman

( S E A L )

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GREGORY A. THORNQUIST, Member

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LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.